

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of)	
ENBRIDGE ENERGY, LIMITED PARTNERSHIP,)	
against UPPER PENINSULA POWER COMPANY.)	Case No. U-17077
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At the February 5, 2018 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER

On December 16, 2009, in Case No. U-15988, the Commission approved a settlement agreement between Upper Peninsula Power Company (UPPCo), the Commission Staff (Staff), and several intervening parties that, among other things, authorized a rate increase and established a pilot revenue decoupling mechanism (RDM) for UPPCo (December 16 order). Subsequently, UPPCo filed two additional rate cases, Case Nos. U-16166 and U-16417, both of which were resolved by settlement agreement and approved by the Commission on December 21, 2010, and December 20, 2011, respectively. The settlement agreement in Case No. U-16166 included, with one modification, the RDM established in Case No. U-15988 (December 21 order). In Case No. U-16417, the parties agreed that the modified RDM would terminate on December 31, 2011, but that the termination would “not affect the reconciliation and related surcharges/credits

associated with UPPCo's 2010 and 2011 RDM." December 20, 2011 order in Case No. U-16417, p. 3.

On May 13, 2011, UPPCo filed an application in Case No. U-16568 to reconcile its RDM for 2010. After a fully contested hearing, the Administrative Law Judge issued a Proposal for Decision (PFD) on March 28, 2012 (March 28 PFD).

Following the March 28 PFD, but prior to the Commission's August 14, 2012 decision in Case No. U-16568 (August 14 order), the Court of Appeals issued an opinion in *In re Detroit Edison Co Application*, 296 Mich App 101; 817 NW2d 630 (2012) (*In re Detroit Edison*), reversing a Commission order approving an electric RDM for DTE Electric Company (DTE Electric) in a different contested case hearing. In its August 14 order, the Commission considered the impact of *In re Detroit Edison*, determined that it did not apply to UPPCo's RDM (which was implemented via settlement agreement), approved the company's 2010 reconciliation of its RDM, and authorized UPPCo to collect a revenue shortfall of \$1,723,294.

On August 20, 2012, Enbridge Energy, Limited Partnership (Enbridge) filed a petition for rehearing or, in the alternative, formal complaint requesting that the Commission reconsider its August 14 order (August 20 petition and complaint) in Case No. U-16568. The Commission denied Enbridge's petition for rehearing on September 25, 2012 (September 25 order), finding that Enbridge was not a party and, therefore, lacked standing to file a petition for rehearing.

On October 23, 2012, Enbridge filed a formal complaint in this docket against UPPCo alleging that the Commission lacked statutory authority to approve an electric RDM, an RDM reconciliation, and the resulting revenue shortfall. On December 11, 2012, UPPCo filed an answer and motion to dismiss. The Staff and Enbridge filed motions for summary disposition on

December 11 and 12, 2012, respectively. On December 14, 2012, UPPCo filed a response to Enbridge's motion for summary disposition.

On May 13, 2014, the Commission granted UPPCo's motion to dismiss and dismissed the complaint with prejudice (May 13 order). On May 27, 2014, Enbridge appealed the May 13 order to the Michigan Court of Appeals. On December 22, 2015, in *Enbridge Energy Ltd. Partnership v Upper Peninsula Power Co.*, 313 Mich App 669; 884 NW2d 581 (2015), the Court of Appeals issued an opinion (December 22 opinion): (1) holding that the Commission erred in approving the settlement agreement including the RDM and in dismissing Enbridge's complaint; and (2) remanding the case for further proceedings.

On February 2, 2016, UPPCo and the Staff filed applications for leave to appeal to the Michigan Supreme Court, which, after hearing oral argument on the applications, denied the applications on May 24, 2017. The Supreme Court's denial of the applications leaves intact the Court of Appeals' December 22 opinion remanding the case to the Commission for further proceedings.

On July 12, 2017, the Commission issued an order (July 12 order) in this docket inviting parties to address the purpose and scope of the remand proceeding ordered by the Court of Appeals. It further directed parties to submit briefs by August 4, 2017, outlining their positions regarding how the Commission should address the complaint, addressing what form of proceeding or proceedings should take place before the Commission, and indicating what issues each party deems necessary to resolve in those proceedings.

On August 3, 2017, Enbridge filed a request to withdraw its complaint, indicating that, following the conclusion of appellate proceedings, Enbridge and UPPCo engaged in discussions aimed at settling their differences concerning Enbridge's claims in this proceeding, and that the

two parties have “successfully resolved those differences.” Enbridge requested that the Commission both approve its request to withdraw its complaint and enter an order dismissing its complaint with prejudice. On August 4, 2017, Enbridge, UPPCo, and the Staff filed timely briefs in response to the July 12 order. Enbridge again reiterated its request to withdraw its complaint, urging the Commission to dismiss its complaint with prejudice and to close the docket. UPPCo confirmed that the two companies held discussions and reached an agreement resolving all issues raised in Enbridge’s complaint. UPPCo stated that it supports Enbridge’s request to withdraw its complaint and requested that the Commission grant Enbridge’s request to dismiss the complaint with prejudice. The Staff also acknowledged in its brief that Enbridge and UPPCo have resolved the issues raised in the complaint.

The Commission, having reviewed Enbridge’s request to withdraw its complaint, and the parties’ briefs, approves Enbridge’s request to withdraw its complaint, and dismisses the complaint with prejudice. The Commission further finds that this docket shall be closed.

THEREFORE, IT IS ORDERED that:

A. Enbridge Energy, Limited Partnership’s request to withdraw its formal complaint is approved, and the complaint is dismissed with prejudice.

B. This order closes the docket.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General – Public Service Division at pungp1@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General – Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Norman J. Saari, Commissioner

Rachael A. Eubanks, Commissioner

By its action of February 5, 2018.

Kavita Kale, Executive Secretary